

STATEMENT OF SENATOR JOHN McCain  
CHAIRMAN, SENATE COMMITTEE ON  
COMMERCE, SCIENCE, AND TRANSPORTATION  
FULL COMMITTEE HEARING  
ON S.303, THE SATELLITE TELEVISION ACT OF 1999  
FEBRUARY 23, 1999

- Good morning. The Senate Commerce Committee meets today in our latest attempt to solve the major consumer problem that will occur when satellite TV subscribers begin losing their distant network TV stations this Sunday.
- I would like to welcome the witnesses who are with us today to help us find a solution to this problem: Andy Fisher, Executive Vice President of Cox Broadcasting, representing the National Association of Broadcasters; Eddy Hartenstein, President of DirecTV, representing the satellite TV industry; and Gene Kimmelman, co-director of the Washington office of Consumers Union, representing that long-suffering and often overlooked constituency, the average consumer.
- Before we hear from our witnesses, let me tell you how we got to where we are today.
- The blank screens that satellite TV subscribers will begin seeing next Sunday are the culmination of a long and bitter court fight between broadcast TV companies and satellite TV companies that was won by the broadcasters. Despite over six months of intensive Congressional efforts to avert this shutoff, the broadcast and satellite TV industries remain unable to compromise their differences in a way that would serve consumers' interests as much as their own.
- After endless months of litigating, lawyering, and lobbying, these industries are still at odds over one question: should satellite TV subscribers be allowed to continue receiving *distant* network stations when they can also receive *local* network stations, either off-the-air or as a part of their monthly satellite TV service?
- Seems like a reasonably easy question, right? And a reasonable person asked that question would probably answer, "Why not?" Why wouldn't it be reasonable to let satellite TV subscribers keep their distant networks if they want to, even if local stations are also available? Why should satellite TV

consumers have no choice in the matter?

- The most obvious answer is, unfortunately, also the right one. This is Congress, where telecommunications industry lobbying is no-holds-barred and where *no* answers are easy — especially when it comes to a showdown between corporate benefit and consumer welfare.
- In a sense, this whole mess *started* because of federal law, which prohibits satellite TV companies from carrying local network stations. It also doesn't let them carry distant network stations unless the customer lives in an area defined as being beyond the reach of satisfactory off-air reception of local TV stations.
- This is bad law for several reasons. Satellite TV's inability to carry local stations puts it at an obvious competitive disadvantage to cable TV, which does carry all local signals. This problem is aggravated by the fact that the law has a somewhat unrealistic way of defining when local stations are considered receivable. As a result, satellite TV companies found themselves precluded from providing *distant* network signals to subscribers who considered the off-air reception of their *local* stations unsatisfactory. Given this state of affairs, it didn't take long for some satellite TV companies to make a habit of simply providing distant network signals to all their subscribers, even when they weren't eligible to receive them.
- And so the satellite TV companies broke the law; the broadcasters sued to enforce the law; and the broadcasters won. The courts ruled they could shut the illegal distant network signals off. After agreeing last year to Congressional requests that they defer these shutoffs until February 28, the broadcasters are now set to begin enforcing their court orders this Sunday.
- All the satellite TV companies can do at this point to buy a little more time is to offer the same illegal signals in a different way, thereby removing themselves temporarily from the reach of the court's orders. Although both Echostar and DirecTV are doing this, it's only likely to postpone the inevitable. All that would be required to reactivate the deletions is for the court to enter a new order, and there's no reason to expect that it won't.
- When all is said and done, this litigation shootout is going to claim a lot of innocent victims. First, of course, are the estimated two million satellite TV subscribers who are about to have the plug suddenly pulled on their distant network signals. This is unfortunate, because these people are *customers*, not

*accomplices.*

- The other, less obvious victims are the nation's cable TV subscribers, who continue to endure cable rate increases that outstrip by many multiples the price increases of other consumer goods and services. And that's *with* federal rate regulation in effect. But cable TV rate regulation ends on March 31 — one month after the satellite TV companies have to begin dropping their subscribers' distant network stations.
- Unless satellite TV improves its ability to compete effectively with cable TV for the hearts and eyeballs of the multichannel video audience, there will be *no* competitive check on cable rates to take the place of rate regulation on March 31. Whatever the extent of the damage individual subscribers will incur when they lose their distant network signals, the damage to satellite TV's competitive standing will be even worse. Quite simply, these shutoffs could not occur at a worse time, unless, perhaps, in the middle of the Super Bowl.
- This Committee has not just awakened to these problems. Last year I sponsored legislation that would, at long last, have cleared the way for satellite TV companies to carry local TV stations. I am sponsoring the same legislation again this year. The broadcasters and the satellite TV companies both endorse carriage of local signals.
- Although this legislation would solve satellite TV's *local* signal problem, making local signals available still doesn't answer the question of whether satellite TV subscribers ought to be forced to drop their *distant* network stations in return. An undetermined number of subscribers want to keep their existing service, even if they have to pay a surcharge for it. And on that issue, the broadcast TV and satellite TV industries remain intractably opposed.
- The broadcasters argue that local stations will give satellite TV subscribers all the network programming they're entitled to, making the distant stations unnecessary. They also contend that distant network stations rob local stations of their audience and advertising revenues. The satellite TV industry, on the other hand, believes that its customers should not be arbitrarily deprived of channels they are accustomed to receiving and that enable them to

enjoy decent network TV signals and more program options.

- This isn't the first time we have tried to solve *this* problem, either. Last year I drafted legislation that would have permitted satellite TV subscribers in a local station's service area to keep receiving distant network signals as long as the satellite TV company compensated the local broadcaster for any lost revenues. The broadcast industry didn't *want* compensation. As a last resort I sponsored legislation that would have restricted distant network signals to only a small fraction -- three percent -- of the local station's audience. The broadcasters *liked* that approach, but the satellite industry didn't. Time finally ran out, and the chance for legislation died.
- That brings us to today, and to a different approach to solving this problem, one that is intended to lead to a reasonable solution for all the parties involved.
- Senator Burns and I are cosponsoring S.303, The Satellite Television Act of 1999. This new legislation would allow satellite TV companies to continue to provide distant network channels, for a period of six months, to subscribers who currently receive them and who reside outside the heart of the local TV station's market. During this six months the Federal Communications Commission would be required to adopt rules determining whether, and to what extent, satellite TV companies might be allowed to continue offering distant network signals to these subscribers. This determination would be based on the FCC's evaluation of the extent to which continuing this existing service would be likely to materially harm the local broadcaster's ability to serve its local audience.
- The bill contains specific safeguards to assure that local broadcasting will not be hurt and that the FCC acts prudently. It would require that the FCC support any decision authorizing continued distant signal service with clear and convincing evidence that local stations would not be materially harmed as a result. The FCC would be further empowered to impose program blackouts on the distant signals, if the practicality and feasibility of doing so were also supported by clear and convincing evidence.
- Finally, the legislation would not interfere with any local broadcaster's right to

require satellite TV carriers to drop distant network signals that are being illegally provided to subscribers living in the core of the local station's market. In doing this we recognize that some of these satellite TV subscribers might want to retain these signals just as much as subscribers who live farther from the center of the market. However, their nearness to the local stations is a critical difference: unlike people who live farther away from the local stations, these satellite TV subscribers are almost certainly able to view local stations clearly off-air. This in turn tends to make them more local station-oriented, more apt to watch local stations instead of distant stations, and therefore more of a key component of the local station's advertiser support.

- Although the bill would not permit illegal signal carriage to continue, even on a temporary basis, if the subscriber resides close to the local station, nothing in the bill would affect the right of *any* subscribers, regardless of *where* they live, to receive a distant network signal if the local station doesn't provide the subscriber with at least the minimal signal strength the law prescribes. And nothing would prohibit broadcasters from granting as many other waivers as they want to.
- Admittedly, this is a compromise and, as with all compromises, no one interest is perfectly served. But it would help satellite TV be a more effective competitor to cable by enabling it to carry local stations, and in doing so would mitigate a particularly ill-timed competitive harm. While it would not automatically permit all existing distant network signal carriage to continue, it would allow satellite TV subscribers most likely to need, and to want, these signals to continue receiving them temporarily. While it would not allow broadcasters to be the sole arbiters of which satellite TV subscribers shall be allowed to receive distant network signals permanently, it would require an impartial agency, the FCC, to make careful, fact-based decisions on where permanent carriage can continue without harming local broadcasters. In short, while it would not provide *perfect* answers, it would at least provide *understandable* answers.
- Yet despite the safeguards, despite the attempts to strike a balanced approach, this bill has still not forged a consensus. In the exact opposite of what happened on last year's legislation, the *satellite TV industry* supports this bill, and the *broadcasters* oppose it.
- I will listen carefully, one last time, to testimony on this issue. But before doing so I want to give you my perspective on this debate.

- As much consumer trouble as this problem will cause, it's still not the most important telecom problem consumers face. For example, it doesn't match the problems we're going to have to deal with if the average consumer keeps paying higher telecom bills without getting more telecom competition or new advanced telecommunications services in return. It also pales in comparison to other examples of how telecommunications companies hoodwink Congress into thinking that their *corporate* interests are the same as *consumers'* interests -- like when these same broadcasters successfully persuaded Congress to give them, absolutely free, an estimated \$70 billion worth of spectrum to use for high-definition TV.
- To the broadcasters who now stand opposed to this legislation I would say this. Your industry is facing an unprecedented challenge — adapting to a new digital world that will offer consumers limitless channels of integrated video, voice and data service. These channels will give your audience instant access to uncounted new sources of information and entertainment, and allow them to create and share their own material and ideas directly with everyone else.
- *That*, I assure you, constitutes a major issue for your industry. The one you raise today doesn't.
- But in Congress, as in *real* life, little problems can unexpectedly assume a life of their own. In real life, consumers unfazed by broadcasters' appropriation of \$70 billion in public assets might feel *very* fazed indeed when those same broadcasters repay the favor by forcing them to give up a valued satellite service. The loss of \$70 billion is hard to understand; but *everybody* will understand what those blank TV screens mean.
- As far as Congress goes, as a practical matter we can only respond to valid issues of urgent public importance. Broadcasters insist that cutting off satellite TV subscribers' distant network signals is one of those issues. Suffice it to say, that claim allows room for doubt. And for that very reason, broadcasters should perhaps reflect on the extent to which you may be creating room for doubt the *next* time you raise a clamor about some *other* issue of purported urgency.
- But that's another issue, for another day.

